

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1627 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
No. 1 to 5 No

VINODKUMAR MANGALDAS PATEL

Versus

BHAILALBHAI NARANLAL PATEL & 1

Appearance:

MR A.K. PADIA FOR MR. MUKESH K SHAH for Petitioner

MR RA PATEL for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 03/03/98

ORAL JUDGEMENT

This is a revision application under Section 115 of C.P.C. against the judgement dated 15.7.1995 passed by the Second Joint District Judge, Ahmedabad (Rural), Mirzapur whereby the learned judge dismissed the appeal and confirmed the order of the Civil Judge (S.D.) below Exh. 5 in Regular Civil Suit No. 724 of 1992.

The plaintiff petitioner filed suit for permanent injunction stating inter alia that he is a tenant in the suit premises in village Kubadthal. The suit premises was let out to his deceased father about 20 to 30 years back on monthly rent of Rs.10/- since then they are in actual and physical possession of the suit property. It is also stated that they have been paying taxes of the village panchayat. Along with the suit, the plaintiff filed an application Exh. 5 for grant of temporary injunction. The defendants resisted the suit as well as the injunction application. The defendants denied that the plaintiff is tenant in the suit premises. According to the defendants the plaintiff has nothing to do with the suit property but he has illegally entered in the suit premises. The trial court on the basis of oral and documentary evidence arrived at the conclusion that the plaintiff has failed to show even prima facie that he is a tenant in the suit premises. The said finding has been confirmed by the appellate court.

It is contended by Mr. A.K. Padia that there is an overwhelming evidence on record to show that the petitioner-plaintiff is in possession of the suit premises. He has invited my attention to the panchnama mark-10/3 dated 18.8.1992 which shows that he is in possession. He has also shown certain receipts to show that the tax has been paid by him.

I have considered the contention of the learned counsel. The receipt does not bear the name of the plaintiff. There is no other evidence to show that the petitioner is tenant in the suit premises. In absence of any positive evidence to show that the petitioner is a tenant in the suit premises, simply because, he is in illegal possession, he can get a declaration from the court that he is a tenant in the premises, so as he is not entitled to protection from eviction. The finding of fact arrived at by the court below does not call for interference by this court in exercise of power under Section 115 C.P.C.

In view of the aforesaid, the revision application is rejected. Rule is discharged. Interim relief vacated.

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